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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	No. CR 18-00577 CRB
)	
MICHAEL RICHARD LYNCH and)	
STEPHEN KEITH CHAMBERLAIN,)	
)	
Defendants.)	San Francisco, California
_____)	

Monday, February 4, 2019

TRANSCRIPT OF PROCEEDINGS

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(Appearances continued, next page)

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Monday - February 4, 2019

4:18 p.m.

P R O C E E D I N G S

THE CLERK: Calling Criminal Action CR-18-0577, USA versus Michael Richard Lynch and Stephen Keith Chamberlain. Counsel, please state your appearances.

MR. REEVES: Adam Reeves, Robert Leach and William Frentzen for the United States. Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. WEINGARTEN: Good afternoon, Your Honor. It's Reid Weingarten, Chris Morvillo, Brian Heberlig, for Dr. Lynch.

MR. LINCENBERG: Good afternoon, Your Honor. Gary Lincenberg specially appearing for Mr. Chamberlain, who is present in court.

THE COURT: Specially appearing. What's that about? What do you mean, you're specially appearing?

MR. LINCENBERG: Just trying to work out the remaining details, Your Honor.

THE COURT: Well, I don't want to pry, but it seems to me that in a criminal case -- he's here, so I -- see, he's here, you're not? Let me just deal with that one. I don't think it quite works like that.

MR. LINCENBERG: Well, Your Honor, obviously I'm here. And there's some issues to be worked out which, if the Court wanted to pry --

THE COURT: No, I don't want to pry. And that's -- okay.

1 So in other words, your special appearance is not related to
2 jurisdictional issues.

3 **MR. LINCENBERG:** Correct.

4 **THE COURT:** Okay, I'm sorry.

5 **MR. LINCENBERG:** Correct.

6 **THE COURT:** That's what I thought it was, and then I was
7 trying to figure out whether we're going get into some
8 jurisdictional issue. But if the arrangements are that -- if
9 your special appearance is dictated by coming to appropriate
10 terms with your client, that's fine. Okay, there's no problem
11 with that at all. That happens all the time. Okay. Thank
12 you.

13 So we have you here. We don't have Dr. Lynch here.

14 (Reporter interruption)

15 **THE COURT:** Yeah, defendant. Right. Sorry. So, let's
16 deal with first, Mr. Chamberlain and then we'll deal with
17 Dr. Lynch.

18 (Defendant Chamberlain present, not in custody)

19 My understanding is the -- Mr. Chamberlain is here as a
20 result of an agreement with the government. Oh, I don't know;
21 you're here as a result of the indictment. But that you came
22 here voluntarily, and submitted yourself to the jurisdiction of
23 the Court.

24 And I don't know whether or not any terms of your release
25 have been worked out. But as I -- I think that, as -- well,

1 first of all, I think the government has made representations
2 on the Court's behalf that your voluntary appearance will
3 result in a -- what I will call a nominal bail, an agreement
4 with standard conditions that would permit you -- I guess I
5 still have it on my desk somewhere --

6 **MR. REEVES:** We have agreed to release conditions,
7 Your Honor.

8 **THE COURT:** All right. So, do -- has that form been
9 executed?

10 **MR. REEVES:** No. I propose that we arraign
11 Mr. Chamberlain, and that we then set the release conditions,
12 which are identical to those for Mr. Hussain.

13 **THE COURT:** Okay, I think that's fine. I see no problem
14 with that.

15 (Document tendered)

16 **MR. REEVES:** Thank you.

17 **THE COURT:** So Mr. Chamberlain, you have been charged in a
18 grand jury indictment with a violation of 18 U.S.C. 1349,
19 conspiracy to commit wire fraud; 18 U.S.C. Section 1343, wire
20 fraud; and 18 U.S.C. Section 2, aiding and abetting. As well
21 as several charges that there ought to be a forfeiture or
22 criminal forfeiture with respect to certain property.

23 I now turn to the United States to complete the
24 arraignment.

25 **MR. REEVES:** Yes, Your Honor.

1 Mr. Chamberlain and one other co-defendant have been
2 charged in a 15-count indictment that specifically alleges that
3 in or about -- beginning in or about January, 2009, and
4 continuing through in or about October, 2011, the defendants,
5 including Mr. Chamberlain, together with others, including
6 former chief financial officer Sushovan Hussain, engaged in a
7 fraudulent scheme to deceive purchasers and sellers of Autonomy
8 securities about the performance -- about the true performance
9 of Autonomy's business, its financial performance and
10 condition, the nature and composition of its products, revenue
11 and expenses, and its prospects for growth.

12 I'll read one more paragraph of the indictment,
13 Your Honor, Paragraph 20.

14 (Off-the-Record discussion between counsel)

15 **MR. REEVES:** It's a 14-count indictment, not a 15-count
16 indictment. I stand corrected.

17 Paragraph 20 in the indictment alleges as follows: That
18 the objectives of the scheme to defraud were, among other
19 things, (a), to ensure that Autonomy reported that if it had
20 met or exceeded projected quarterly results for, among other
21 things, revenue, gross margin, net income, and earnings per
22 share, (b), to maintain and increase the defendants' positions
23 within the company, and to enrich themselves and others through
24 bonuses, salaries and options, and (c), to artificially
25 increase and maintain the share price of Autonomy securities

1 to, among other things, make Autonomy attractive to potential
2 purchasers.

3 Would you like me to read the maximum penalties?

4 **THE COURT:** Yes, please.

5 **MR. REEVES:** The maximum penalties for a conviction of
6 conspiracy in violation of U.S.C. 1349 and for wire fraud in
7 violation of 18 U.S.C. 1343 are a 20-year term of imprisonment;
8 a \$250,000 fine or twice the gross gain or loss, whichever is
9 greater; a three-year term of supervised release; a \$100
10 special assessment; and restitution and asset forfeiture in
11 amounts to be determined by the Court.

12 Thank you.

13 **THE COURT:** Mr. Chamberlain, have you received a copy of
14 the indictment?

15 **DEFENDANT CHAMBERLAIN:** Yes. Yes, I have, Your Honor.

16 **THE COURT:** And you understand the nature of the charges.
17 Do you wish to plead at this time?

18 **DEFENDANT CHAMBERLAIN:** Yes. Not guilty, Your Honor.

19 **THE COURT:** Okay. As to all counts.

20 **DEFENDANT CHAMBERLAIN:** That's correct, yes.

21 **THE COURT:** All right. And let me caution you that you
22 need not make any statements in connection with any of the
23 matters that are subject to the grand jury indictment.

24 You are, of course, entitled to counsel. You have able
25 counsel next to you. But of course, if you can't afford

1 counsel, or if you choose other counsel -- first, if you can't
2 afford counsel, then counsel will be appointed by the Court.
3 But you can select counsel of your own choosing. And I assume
4 that's what you will do in this matter.

5 **DEFENDANT CHAMBERLAIN:** Yes, Your Honor.

6 **THE COURT:** Okay. Now, of course, this case comes with a
7 history. Most cases do. But this one has a pretty extensive
8 one, since we have already had a full jury trial of a
9 co-defendant. And I think I need to have some discussion as to
10 what is appropriate in terms of time with respect to trial
11 preparation. I'm assuming, of course, that the case is going
12 to go to trial. No reason to believe it won't. But I need to
13 set some dates so that the case moves on.

14 And before I discuss with your counsel prospective dates,
15 I want to find out what is happening with respect to Dr. Lynch.

16 **MR. LINCENBERG:** Did the Court want to set conditions of
17 bond?

18 **THE COURT:** Oh, yes, the standard -- where are they?

19 **MR. REEVES:** The parties have agreed to release conditions
20 for Mr. Chamberlain that are identical to Mr. Hussain's.
21 Specifically, a \$1,000 cash bond, and that travel be authorized
22 to the United Kingdom where Mr. Chamberlain resides, and to the
23 United States, and to any other country where there is an
24 extradition treaty with the United States.

25 **THE COURT:** Okay. Also the standard condition, isn't it,

1 that he will not commit -- he will not commit a federal, state
2 or local criminal offense.

3 **MR. REEVES:** That's correct, Your Honor. That he agrees
4 to appear at all proceedings as ordered by the Court; that he
5 not commit any other crimes, et cetera; that he not harass,
6 threaten, intimidate, injure, tamper with other parts of the
7 case; and that there be travel restrictions. It would be those
8 four restrictions.

9 **MR. LINCENBERG:** (Nods head)

10 **THE COURT:** Okay. With respect to those conditions, what
11 I'm particularly concerned about is, since you won't be
12 residing in the Northern District of California, is your
13 willingness to come to the Northern District to appear at all
14 court -- at any court proceeding in which you are directed to
15 appear.

16 Do you understand that?

17 **DEFENDANT CHAMBERLAIN:** Yes, Your Honor.

18 **THE COURT:** In other words, there will be -- you're an
19 attorney, aren't you?

20 **MR. LINCENBERG:** No.

21 **DEFENDANT CHAMBERLAIN:** No.

22 **THE COURT:** No, you're not an attorney, okay.

23 **MR. REEVES:** He's an accountant, Your Honor.

24 **THE COURT:** An accountant, okay. There will be, from time
25 to time, court proceedings. Under our laws, you are entitled

1 to be present at all court proceedings. There isn't going to
2 be a secret proceeding involving your case, with respect to
3 your not being present.

4 So it's important for the Court's consideration, moving
5 the case forward and setting dates and so forth, that I have
6 your agreement that upon notification either by the Court or by
7 your counsel that you are required to appear at a particular
8 date and time -- and I certainly will make sure that you get
9 adequate notice -- that you will appear.

10 Is that of concern to you?

11 **DEFENDANT CHAMBERLAIN:** No. Not at all, Your Honor.

12 **THE COURT:** Okay. Anything else?

13 **MR. REEVES:** Not for the government, Your Honor.

14 **THE COURT:** Okay, so I guess I -- I don't do arraignments,
15 but -- that may be obvious from the way I conducted this one.

16 But does Mr. Chamberlain sign a piece of paper or
17 something to that --

18 **MR. REEVES:** We are going to prepare the bond right now.

19 **THE COURT:** Yes.

20 **MR. REEVES:** And he will sign it, and we'll give it to the
21 courtroom deputy.

22 **THE COURT:** Okay. So I now can go past this temporarily
23 and find out what is happening with Dr. Lynch.

24 **MR. LINCENBERG:** Thank you, Your Honor.

25 **DEFENDANT CHAMBERLAIN:** Thank you.

1 **MR. REEVES:** Thank you.

2 (Document tendered)

3 **THE COURT:** Mr. Weingarten?

4 **MR. WEINGARTEN:** Good afternoon, Your Honor.

5 **THE COURT:** Good afternoon.

6 **MR. WEINGARTEN:** So when I was last here, the Court gave
7 us some time over the holidays and instructed us to come back
8 with a status report.

9 The two headlines of the status report are first, as you
10 may recall, there's a civil trial about to start in London.
11 And the issue for us was whether or not we would seek a stay.
12 And we've chosen not to.

13 So the civil trial begins next month, and steady as she
14 goes, in London, on the civil trial between HP and Mike Lynch.

15 Number two --

16 **THE COURT:** Begins when? March?

17 **MR. WEINGARTEN:** End of March.

18 **THE COURT:** End of March. Okay.

19 **MR. WEINGARTEN:** And, and, you know, they do things
20 somewhat differently there. There's some estimates that the
21 trial could be eight or nine months.

22 **THE COURT:** Okay.

23 **MR. WEINGARTEN:** Number two, we were in London a couple of
24 weeks ago to visit with the client, to sort of tie up loose
25 ends about this appearance. He did not appear well. We urged

1 him to go to the doctor. He did. He had emergency surgery.
2 The surgery was successful, but he is under constant care.

3 If the Court wishes to have more detail, we would like to
4 respect his privacy, and present that information to the Court
5 privately.

6 **THE COURT:** Well, is his health such that he's prohibited
7 from traveling?

8 **MR. WEINGARTEN:** Yes. For now. We're hopeful -- we're
9 hopeful that everything will be fine. But certain- -- the
10 doctor's certainly instructed him post-surgery -- and the
11 surgery was last week -- that he was not to travel for at least
12 three weeks.

13 **THE COURT:** Okay. Well, as to that, I think that what I
14 need is a declaration which could be filed under seal, from his
15 medical specialist, describing his medical condition.

16 **MR. WEINGARTEN:** Sure.

17 **THE COURT:** And in addition, also setting forth what in
18 the doctor's opinion is the time that he will be able to travel
19 to the United States for -- or San Francisco for a one-day
20 appearance in this court.

21 **MR. WEINGARTEN:** Sure. And I'm hopeful that -- and our
22 fingers are crossed -- that all will be well and this won't be
23 an issue going forward. But I just wanted to report to you.

24 **THE COURT:** Well, of course. It's obvious. Yes, of
25 course.

1 **MR. WEINGARTEN:** And I'm happy to share with the Court
2 today the details.

3 **THE COURT:** Well, I don't know that I need to know the
4 details today. I think the doctor can --

5 **MR. WEINGARTEN:** Sure.

6 **THE COURT:** -- or doctors can submit that report.

7 **MR. WEINGARTEN:** There's one other issue that I would like
8 --

9 **THE COURT:** Is it your position -- are you telling me that
10 it is the medical -- that the medical condition is the
11 impediment to his coming to court now?

12 **MR. WEINGARTEN:** I think it will be clear when I get to
13 this next -- I'm simply reporting what has happened since I
14 last saw you.

15 **THE COURT:** Go ahead.

16 **MR. WEINGARTEN:** Okay. So I want to talk very, very
17 briefly about the E word, extradition. And I want to preface
18 it with the following.

19 Mike Lynch has faith in the American justice system. And
20 he wants to be vindicated here. What is also true, with 30
21 seconds' worth of background -- historically, the Brits have
22 been very quick to extradite British people to the United
23 States if Uncle Sam asks them to do so. That is changing. The
24 Brits passed a law that talked about a forum bar, meaning that
25 in cases where even when the United States has jurisdiction, if

1 there are more ties to England, the courts in England are
2 capable under the law now saying no to the United States. And
3 recently, they have done just that.

4 There are barristers in England that have said to our
5 client that his extradition case is one of the strongest
6 they've ever seen, from an English perspective.

7 Having said that, there's always been a presumption from
8 the moment we have engaged with the prosecutors here that if
9 charged, Mike would come, stand trial, and seek to be
10 vindicated.

11 What has changed is the Invoke/Darktrace investigation.
12 We are formal strangers to that, as the Court knows. These are
13 independent companies with independent counsel. But it's
14 relevant to us, because we see three things.

15 One, we see that it seems obvious that the government is
16 going to supersede here. That the charges presently extant
17 will not be the charges that finally go to trial. That's
18 number one.

19 And number two, it seems from our perspective -- and
20 obviously, it's a grand jury investigation. We don't know what
21 they are doing; we don't know what their evidence is. We -- we
22 know, we've had conversations with them. And from our
23 perspective, the gravamen of this investigation is that
24 somehow, some way, our client's purchase of stock from these
25 companies to generate legal fees for the Kecker law firm is

1 somehow hush money, somehow an obstruction of justice, somehow
2 money laundering.

3 And let me say immediately, John Keker is a long-time
4 friend of mine, he's one of my heroes. I got him into this
5 case. I wanted his law firm to be paid for the work they did.
6 So if there's a hush-money obstruction going on here, I'm
7 guilty of it, too.

8 We find these allegations, frankly, Your Honor, absurd.
9 We cannot believe that the U.S. Attorney's office here is
10 entertaining the possibility that the payment of legal fees to
11 the Keker law firm is the equivalent of an obstruction of
12 justice.

13 And again, this is how we see it. We don't know what's
14 going on in the grand jury, but --

15 **THE COURT:** Well, when you say how you see it, have you
16 been privy to any of the filings in this case in connection
17 with the -- in connection with the subpoenas?

18 **MR. WEINGARTEN:** What is true, Your Honor, is every --
19 basically everything I know has come from the prosecutors when
20 we advocated to them not to indict Mike Lynch. That almost
21 entirely informs my opinion.

22 **THE COURT:** Are you telling me you haven't been privy to
23 that?

24 **MR. WEINGARTEN:** I personally have not.

25 **THE COURT:** Well, I mean, you, personally. You have three

1 lawyers out there. I mean, I'm talking about have the defense
2 been privy to any of the information that's contained in the
3 filings in connection with the -- in connection with the
4 subpoenas which are presently being litigated to which you are
5 referring?

6 **MR. WEINGARTEN:** I don't want to answer one way or another
7 until I consult with Mr. Morvillo. Mr. Morvillo -- we have
8 become -- absolutely -- we've had conversations with --

9 **THE COURT:** The reason I ask the question --

10 **MR. WEINGARTEN:** Yes.

11 **THE COURT:** -- is because I don't believe, though I can be
12 refreshed on this, that I've seen anything to suggest the -- to
13 suggest that the inquiry is focused on exactly what you've said
14 is your concern.

15 There are -- there are many concerns out there, and I'm
16 going to address them on the 13th in connection with the
17 subpoenas. But -- you know, and this is not really the time to
18 try to air what is the justification or the direction of the
19 investigation.

20 You say: Well, it's clear to you that they are going to
21 get a superseding indictment. I have no idea. You may be
22 right. Wasn't clear to me.

23 But you may be absolutely correct. And I don't pretend to
24 sit in the seat, knowing everything that the government
25 believes to have occurred in fashioning -- in fashioning their

1 particular prosecution strategy. So I don't know.

2 But I do understand that -- well, I guess what I have to
3 ask you is: Why is any of this relevant?

4 **MR. WEINGARTEN:** And here's the answer. And the answer
5 is: we allow for the possibility that there's a superseding
6 indictment, and we allow for the possibility that the
7 superseding indictment will contain charges that are not
8 extraditable. And we allow for the possibility that the
9 decision whether or not to fight extradition would be different
10 once we see the superseding indictment.

11 So that -- when I was last here I made a -- I asked for
12 a -- a modest ask. And I think I want to ask for another
13 modest ask. And the modest ask is as follows: Is that the
14 second the government says to us there's no superseding
15 indictment or there's a superseding indictment, we immediately
16 make a judgment on the extradition issue. And then, for all
17 intents and purposes, we go forward.

18 And what I think -- I don't see the Court being
19 disadvantaged that way because --

20 **THE COURT:** Well, disadvantaged. Number one, I spent one
21 -- I've had one trial, which has taken a considerable period of
22 time. That defendant, by the way, is awaiting sentencing, as
23 you're well aware.

24 **MR. WEINGARTEN:** Yes, yes.

25 **THE COURT:** Secondly, the disadvantage isn't personal to

1 the Court. Of course not. Because I -- I fill my day. It's
2 not -- that's not a problem. I don't even go by the hour. It
3 just happens that I'm occupied. So I'm not looking at it,
4 either financially or academically, interesting.

5 But I have a lot of cases out there. There is a
6 Congressional statute that tells us that we must move forward
7 on criminal matters in an expeditious way.

8 **MR. WEINGARTEN:** Of course.

9 **THE COURT:** So I think -- I think, if what you are
10 proposing is simply -- as I hear it -- and I shouldn't
11 interrupt you because -- but I think I've heard you on this
12 issue, that I should wait for either a superseding indictment
13 or an indication by the government that they are not going to
14 supersede.

15 **MR. WEINGARTEN:** Yes.

16 **THE COURT:** The Court is not willing to do that, because
17 in the event they do supersede, --

18 **MR. LINCENBERG:** Yes.

19 **THE COURT:** -- you are entitled -- there are remedies.
20 They are entitled to further continuances. You may be entitled
21 to further -- further proceedings relating to that.

22 As to extradition, I'm not quite sure I hear exactly what
23 your position is on that. You are suggesting to me that there
24 may be very valid defenses that can be asserted with respect to
25 extradition, to which I say: I haven't the slightest idea.

1 **MR. WEINGARTEN:** Right.

2 **THE COURT:** There may be and there may not be. I don't
3 know. I do think -- and I could be wrong in this, but you can
4 correct me -- that if he were to -- as an example, to waive
5 extradition, he would waive extradition on the present
6 indictment. I don't think he waives as to a superseding
7 indictment.

8 **MR. WEINGARTEN:** Does not.

9 **THE COURT:** Am I wrong?

10 **MR. WEINGARTEN:** No.

11 **THE COURT:** I'm right.

12 **MR. WEINGARTEN:** Yes.

13 **THE COURT:** Okay. I'm batting about 50 percent. So
14 anyway, that would be the case. So we preserve that right.
15 But I'm not here to encourage him to waive indictment or not.

16 And putting aside just for the moment his health concerns,
17 which are of concern --

18 **MR. WEINGARTEN:** Of course.

19 **THE COURT:** Putting those aside, it seems to me, from what
20 I understand in your case, you are quite correct that
21 extradition now takes a fairly lengthy time, or lengthier, to
22 put it in -- time to proceed.

23 So my view is that the United States Attorney's office, in
24 their judgment, because I think that's a question of
25 prosecution judgment -- not entirely, since there's a pending

1 case -- but in their judgment, they should move forward on the
2 extradition proceedings, in the event that your client has
3 chosen, at whatever date we'll look at, not to appear here
4 voluntarily. He doesn't have to appear voluntarily.

5 But I'm not going to sit around and wait for him -- I'm
6 not going to wait for the government to decide whether or not
7 they're going to supersede.

8 Maybe that's the short answer. I am going to give due
9 deference and consideration to his health conditions, because I
10 think that that's something well beyond his control. And also
11 from a humanitarian point of view, they have to be considered.

12 **MR. WEINGARTEN:** (Nods head)

13 **THE COURT:** But it is my intention -- I want to be direct
14 with you. My intention is to move as quickly as the process
15 would -- would permit in -- Mr. Weingarten.

16 **MR. WEINGARTEN:** Can I just say, maybe I misunderstood.
17 Last time I was here, I got the understanding that the Court
18 was okay with the civil trial proceeding first in England.

19 **THE COURT:** I still am.

20 **MR. WEINGARTEN:** Okay.

21 **THE COURT:** No, no, you have the right impression.

22 **MR. WEINGARTEN:** Okay.

23 **THE COURT:** But you see, there is this thing called
24 "multi-task."

25 **MR. WEINGARTEN:** Okay.

1 **THE COURT:** And it seems to me that -- that -- you know,
2 I'm not at all suggesting that I would set a trial date this
3 year.

4 What I'm suggesting is what I would do -- and I'm glad
5 Mr. Chamberlain is here, though I haven't heard his views on
6 the subject. But subject to his views on the subject, I would
7 set a trial date, I would -- the setting of the trial date will
8 occur as quickly as I can do it. That is, as soon as he's
9 here, I will set a trial date. But that trial date will be a
10 function of everything else that's going on.

11 **MR. WEINGARTEN:** Okay.

12 **THE COURT:** The civil trial that's going on. The --
13 perhaps some health considerations, over time. Also, of
14 course, the evidence. You have to look at the evidence. You
15 have to be prepared for trial. So all that is in the future.

16 What is not in the distant future is the process of
17 setting a trial date.

18 **MR. WEINGARTEN:** Can I try one more thing, if I may?

19 **THE COURT:** Try as many as you want.

20 **MR. WEINGARTEN:** Thanks.

21 Let's say hypothetically the Court said to the
22 prosecutors: You have 90 days or 120 days to supercede. And
23 obviously, you've done that in the past with prosecutors, I
24 assume. Other judges have done that.

25 That period of time, civil case in London gets under way,

1 Mike Lynch is fully engaged in London. The proceeding here is
2 not compromised one bit. We learn, at the end of 90 days or
3 120 days, what the charges we're actually going to face are
4 going to be.

5 As I stand before you today, there's a presumption that
6 Mike Lynch is coming to the United States to stand trial and
7 seek to be vindicated.

8 But let's say that we see something in the superseding
9 indictment, and the barristers say: This is crazy, he can't be
10 extradited for this, the courts in London will see it X, Y and
11 Z. Shouldn't he make a decision as whether or not to fight
12 extradition, such an important decision, with the benefit of
13 the knowledge of what he's actually going to be charged with?
14 And if the prosecutors at the end of 90 days or 120 days say:
15 We're not superseding, voilà, we're here.

16 **THE COURT:** Well, the answer to your question is: Yes,
17 you're absolutely correct that judges have, from time to time
18 -- and I have -- said you either supersede it 90 days or
19 whatever it is, or we're proceeding on the current indictment.
20 But they say that -- at least I do -- in the context of a trial
21 date, an impending trial date, in which if there is an
22 superseding indictment, it's going to throw the trial date
23 completely off by virtue -- by virtue of the superseding
24 indictment.

25 In this case, that doesn't seem to be the case, since

1 we're talking about a trial date basically a year from now.

2 So, it could happen, because nobody's seen the charges.
3 You know, if they come in, if I set the trial for January 15th,
4 and they came in December 15th with the superseding indictment,
5 believe me, you'd hear from me. I mean, you'd like to hear
6 from me at that point.

7 But I don't know whether that's going to happen. I don't
8 know whether it's intended. I don't know what the grand jury
9 has found or not found. I don't know how the whole thing is
10 going to play out.

11 So, any other thoughts?

12 **MR. WEINGARTEN:** Just the --

13 **THE COURT:** Yeah.

14 **MR. WEINGARTEN:** Just the Hobbsonian choice that we face
15 here. We know it's in the indictment. And you know, Mike
16 Lynch, if he's a British citizen, he has to make a decision yea
17 or nay. We got that. We understand that completely. But it's
18 a critically important decision, and he's got a lot of people
19 in England telling him a variety of things, including really
20 smart barristers.

21 So all we're asking for is for him to have the opportunity
22 to make that decision, based on full information.

23 **THE COURT:** Well, I understand that argument. But I mean,
24 your argument about full information is that he should see the
25 superseding indictment, if there is one, before making that

1 decision.

2 And my view on that is that he shouldn't have -- is that
3 I'm not prepared to give him that luxury. First of all, I must
4 tell you, I think my powers are quite limited in telling the
5 government what to do about superseding indictments. There may
6 be extraordinary conditions.

7 And maybe you suggest this is one, but I don't think so.
8 I've never heard this argument in this context. But I'm not
9 blaming you for being creative. But I've never heard that as
10 to why I should direct the government to file a -- their
11 superseding indictment on or before a particular date. So I'm
12 not going to do it.

13 Number two, I think it is almost exclusively within the
14 realm of the executive branch whether -- how to proceed on
15 charges. And whenever I've stuck my toe into it, or finger, or
16 whatever one wants to call it, I have been reminded, and
17 properly so, that's not the function of the court. So I'm not
18 going to set down those kinds of deadlines.

19 What I'm concerned about here, in addition to the fairness
20 of the proceeding, I'm also concerned about the progress of the
21 proceeding. And -- because I do have one defendant awaiting
22 sentencing. I have a second defendant who now appears in front
23 of me today. And to be fair, to be honest, to be obvious, I
24 would rather not have three trials in this case.

25 There may be reasons, by the way, which, I have no idea

1 about severance. I have no view on it, don't know the
2 evidence, don't know the arguments and so forth. So, I'm
3 setting those aside. But in the normal course, I would want to
4 try Mr. Chamberlain and Dr. Lynch at the same time. There may
5 be reasons not to. I don't know.

6 But one reason may or may not be that he is -- that he is
7 sitting in England, listening to his British barristers, who
8 I'm sure are outstanding -- though they're probably not as good
9 as the American barristers -- but -- and you won't dispute
10 that. No. At least, not on --

11 **MR. WEINGARTEN:** Not in public.

12 **THE COURT:** Okay. So anyway, I don't know how that's
13 going to go.

14 But I think the appropriate thing -- I think I have to
15 hear from Mr. Chamberlain, from Mr. Lincenberg, on where they
16 are on this whole issue, if they have a view.

17 **MR. WEINGARTEN:** Okay.

18 **THE COURT:** And then I'll try to figure out what to do.

19 **MR. LINCENBERG:** Honestly, Your Honor, I'm not sure what
20 view we have. But if it gets into --

21 **THE COURT:** Well, a view as to -- listen. Not going ask
22 you your view as to extradition, so forth. No. I want your
23 view as to a trial.

24 In other words, I want to know when you think, in the
25 ordinary course, you will be prepared to go to trial in this

1 case.

2 **MR. LINCENBERG:** Well, I'm not sure. I think it probably
3 would be some time in 2020. But the only -- the only comment I
4 had to the discussion that's taken place is that it sounds like
5 it's all relevant to the setting of dates. That, for example,
6 if there's going to be a superseding indictment, whether or not
7 it affects Mr. Chamberlain or not, it sounds like it affects a
8 trial he might be a part of.

9 **THE COURT:** Right.

10 **MR. LINCENBERG:** And so, you know, to the extent that
11 there was more information, it would help in the setting of
12 trial dates.

13 **THE COURT:** Right.

14 **MR. LINCENBERG:** (Shrugs shoulders)

15 **THE COURT:** I understand that. But I've expressed my
16 views as to that. But you're expressing a view, if I
17 understand correctly, that you would not insist on the Speedy
18 Trial Act in -- in bringing this case to trial within 70 days.

19 **MR. LINCENBERG:** Oh, that -- that's correct.

20 **THE COURT:** Yeah.

21 **MR. LINCENBERG:** This is a complex case that we're going
22 to be behind the ball on --

23 **THE COURT:** So I don't have a situation where one
24 defendant is saying: I want my trial as soon as possible, and
25 the other defendant is saying: I don't even know whether I'm

1 going to show up for the trial. I don't have that situation.

2 **MR. LINCENBERG:** That's correct, Your Honor.

3 **THE COURT:** Okay. All right. So that can help me -- that
4 was -- that's only my concern, because then I can put you in
5 the same time pot as Dr. Lynch. Same period.

6 **MR. LINCENBERG:** (Nods head)

7 **THE COURT:** Okay. Mr. Reeves. You have some views on
8 this whole thing?

9 **MR. REEVES:** Yes, I do. I would like to begin with a
10 request that time be excluded as to --

11 **THE COURT:** Yes, it's a complex case. And of course, one
12 defendant has not appeared.

13 **MR. REEVES:** Okay. So thank you, Your Honor.

14 Second, I think rather than sort of predict or guess,
15 frankly, about whether there's additional charges or what
16 action a grand jury may or may not take, I would ask and
17 inquire why Dr. Lynch can't simply follow the same procedure
18 that Mr. Chamberlain has followed, agree to come voluntarily to
19 the United States when he's able to do so.

20 Counsel said that he would be able to travel in three
21 weeks. Why can't we set the case for four weeks out, on March
22 4th, for Dr. Lynch to appear and be arraigned on the existing
23 indictment? That's what we would ask for, please.

24 **THE COURT:** Mr. Weingarten.

25 **MR. WEINGARTEN:** Well, I mean, I don't want to overstay my

1 welcome, and I don't want to repeat myself. I mean, for
2 Dr. Lynch, the decision whether or not to fight extradition is
3 a real one. And he's retained counsel to advise him.

4 To us, everything turns -- the pivot upon which this
5 decision turns for now, because I think we crossed the bridge
6 before the Invoke/Darktrace investigation got under way, was
7 we're here. So now, again, the modest ask is to give us an
8 opportunity to see what --

9 **THE COURT:** Here's what I'm missing.

10 **MR. WEINGARTEN:** Yes.

11 **THE COURT:** Maybe you can fill it in for me.

12 **MR. WEINGARTEN:** Yes.

13 **THE COURT:** I hear -- what Mr. Reeves is saying --

14 **MR. LINCENBERG:** Yes.

15 **THE COURT:** -- as I hear it is: The decision on waiving
16 extradition --

17 **MR. WEINGARTEN:** Yes.

18 **THE COURT:** -- is made on the basis of the indictment as
19 it stands today.

20 **MR. REEVES:** (Nods head)

21 **MR. WEINGARTEN:** Yes.

22 **THE COURT:** Okay. That -- now, if people are telling him
23 that that indictment -- and that's what -- I heard a little bit
24 of what you said --

25 **MR. WEINGARTEN:** Yes.

1 **THE COURT:** -- is subject to -- the extradition is subject
2 to challenge --

3 **MR. WEINGARTEN:** For sure.

4 **THE COURT:** -- based upon that indictment.

5 **MR. WEINGARTEN:** For sure.

6 **THE COURT:** Okay. He'll either have to decide to
7 challenge it, or not.

8 **MR. WEINGARTEN:** But -- sorry.

9 **THE COURT:** If he -- well, I understand why you might want
10 to know everything else that's out there. But it's also clear
11 to me that if he were to waive indictment on those charges, he
12 doesn't waive indictment on any superseding indictment.

13 **MR. REEVES:** Extradition --

14 **THE COURT:** Yeah, pardon me. Extradition on a superseding
15 indictment. So he preserves -- he preserves those claims.

16 Now, he would give up -- and I'm not about to advise him,
17 but obviously he's going to give up whatever challenges he has
18 to the present extradition. Defense of extradition. But I
19 think he has to make that decision now.

20 And I think that it does make sense to continue this for
21 four weeks. We'll pick a day. He can travel on a Sunday or
22 any day that's convenient, and appear in court, and leave the
23 same day. That's not -- that's not an issue.

24 **MR. WEINGARTEN:** Okay, I -- I -- unrelated point. I have
25 a trial that commences in Dallas on March 6th. So what I would

1 like is to consult with his physicians and perhaps suggest a
2 different date, so that I could be here.

3 **THE COURT:** Well, I want you here.

4 **MR. WEINGARTEN:** Thank you.

5 **THE COURT:** That's not a question.

6 **MR. REEVES:** March 11th would also be fine.

7 **MR. WEINGARTEN:** It would have -- for me to be here, it's
8 a long trial in Dallas. For me to be here --

9 **THE COURT:** Who's it in front of?

10 **MR. WEINGARTEN:** Judge Lindsay.

11 **THE COURT:** Judge Lindsay.

12 **MR. WEINGARTEN:** Sam Lindsay.

13 **THE COURT:** Federal judge?

14 **MR. WEINGARTEN:** Yeah.

15 **THE COURT:** Judge Lindsay. I don't know Judge Lindsay.

16 I'm sure Judge Lindsay is a great judge, and may possibly
17 accommodate a brief appearance --

18 **MR. WEINGARTEN:** Okay, we can try.

19 **THE COURT:** -- in San Francisco, either on a Friday or a
20 Monday. I'm going to give you some flexibility. I want -- I
21 want you to be here, either with or without your client, on
22 March 1, March 4th, March 8th or March 11th.

23 **MR. WEINGARTEN:** Okay.

24 **THE COURT:** And as far as his health concerns, if those
25 dates are agreeable -- you don't have to send me anything about

1 his health. I accept your representation. That's good enough
2 for me.

3 **MR. WEINGARTEN:** Thank you.

4 **THE COURT:** And -- you know. But if it turns out that his
5 health care prevents him from going at that time, then I would
6 want a pretty detailed explanation of what's going on.

7 **MR. WEINGARTEN:** Of course.

8 **THE COURT:** Now, Mr. Lincenberg, what about you?

9 **MR. LINCENBERG:** In terms of those dates?

10 **THE COURT:** Yeah. I want them both here together.

11 **MR. LINCENBERG:** What --

12 **THE COURT:** Or, if Mr. Lynch is not going to be here, I
13 want Mr. Chamberlain here. Because we have got to get this
14 thing going.

15 (Off-the-Record discussion between counsel)

16 **MR. LINCENBERG:** Your Honor, those dates are not all good
17 for me, but I think I could have my partner here, if need be.

18 **THE COURT:** Good. All I'm going to do -- what I'm going
19 to try to do is set a date, set a trial date, a motions date.
20 And I may say something about discovery, too.

21 I may give some requirements of the government about
22 furnishing information and so forth. I don't know what you
23 presently have. But there's a lot of discovery in this case.
24 A lot of it, I'm quite sure, is known to you. But there may be
25 things unknown. And I'm going to direct that a certain amount

1 of that --

2 **MR. LINCENBERG:** Judge, can I make one request? Is there
3 a time before March 1, like a couple of days in February?
4 Because I know March 1 --

5 **THE COURT:** Sure. If you do an earlier day, that's fine.

6 **MR. WEINGARTEN:** Okay.

7 **THE COURT:** Just agree amongst yourselves. Okay? No
8 surprises. Everybody gets along, and gets dates -- doesn't
9 have to worry about the --

10 **MR. WEINGARTEN:** Okay.

11 **THE COURT:** -- the "Aha" factor.

12 **MR. REEVES:** Your Honor, I think we're going to need time
13 excluded as to Mr. Chamberlain through a specific date. If we
14 could have a minute to perhaps confer with counsel about a date
15 --

16 **THE COURT:** Go right ahead.

17 **MR. REEVES:** Thank you.

18 (Off-the-Record discussion between counsel)

19 **MR. WEINGARTEN:** Perhaps if we look at February 27th, if
20 the Court has time then?

21 **THE COURT:** February 27th.

22 **MR. REEVES:** That would be fine for the government,
23 Your Honor.

24 **THE CLERK:** We will be in trial. So do you want to come
25 late in the afternoon, 4:00?

1 **MR. LINCENBERG:** Sure.

2 **MR. REEVES:** That's fine for the government.

3 **MR. LINCENBERG:** That's fine with us.

4 **THE COURT:** If you need to change it, call Ms. Scott.

5 **MR. WEINGARTEN:** Okay. Thank you.

6 **MR. LINCENBERG:** Does Mr. Chamberlain need to be here for
7 that?

8 **MR. REEVES:** (Inaudible)

9 **THE COURT:** I want him here, if -- well, look. Let's see,
10 do I need him here? Mr. Lynch is not here. I think the answer
11 is yes.

12 Well, I'm trying to figure out -- I need to hear -- I
13 need -- I need Mr. Chamberlain to be here when I give a trial
14 date. Now, the question is: Am I going to give a trial date
15 on -- if -- if Dr. Lynch isn't here, would I give a trial date?

16 And the reason I need to give a trial date, among other
17 things, is that all the lawyers get busy.

18 (Off-the-Record discussion between counsel)

19 **THE COURT:** And then: No, I can't do it next month, or I
20 can't do it six months from -- yes.

21 **MR. REEVES:** Well, I think the parties can probably confer
22 about all of this, Your Honor.

23 **THE COURT:** Why don't you work it out.

24 **MR. REEVES:** Yeah.

25 **MR. LINCENBERG:** Also, counsel had a good idea that if

1 Mister -- if Mr. Lynch is going to be here, that
2 Mr. Chamberlain should be here as well.

3 **MR. REEVES:** Yes.

4 **THE COURT:** I agree with that.

5 **MR. LINCENBERG:** Otherwise --

6 **THE COURT:** Otherwise, I don't want people going back and
7 forth and back and forth and back and forth.

8 **MR. LINCENBERG:** Right.

9 **THE COURT:** Yeah.

10 **MR. REEVES:** So we will adjourn the case to February 27 --

11 **THE COURT:** And I should also point out, because I think
12 it will be a concern, is that a lot of proceedings could be
13 done without the presence of the client, assuming he executes a
14 waiver, and is advised of it. I'm not -- you know.

15 Obviously -- not talking about a trial, but I am talking
16 about a lot of motions work and so forth and so on, disputes
17 and so forth. As far as I'm concerned, as long as they're
18 notified of it, and they decide -- and elect not to come, they
19 don't have to come.

20 **MR. LINCENBERG:** And Your Honor, if the Court wants to do
21 that orally, right now, we'd be happy to do that.

22 **THE COURT:** Well, I would like to get everybody here.

23 **MR. LINCENBERG:** Okay, just in terms of a waiver of
24 appearance, but --

25 **THE COURT:** (Inaudible)

1 **MR. LINCENBERG:** Okay. I don't want to change the
2 subject. I have a small point, just to clarify --

3 **THE COURT:** Let me take up Mr. Lincenberg's point.
4 Mr. Chamberlain, would you come up for just a moment, please?

5 (Request complied with by the defendant)

6 **THE COURT:** I don't know whether you appreciated exactly
7 what I said, but let me just go through it one more time.

8 You have a right, as I indicated, to be here at all
9 proceedings. In other words, anything that occurs in your
10 case, you're entitled to be here in open court, to observe, to
11 -- to counsel with your attorney, to take positions, all of
12 those things, you're entitled to be here.

13 You're also, with leave of the Court, that is, with my
14 permission, not required to be here for certain proceedings.
15 Because as long as your attorney, your representatives are
16 here, then that's something that I can deal with in terms of
17 whatever is discussed with them.

18 Now, what the process will be will be your counsel will
19 advise you that: On such and such a date, there will be a
20 court hearing on such and such a matter. Do you wish to be
21 here or do you not wish to be here?

22 And that will be your election, after you discuss it with
23 counsel. And you are free not to be here. No action will be
24 taken in connection with your failure to appear.

25 Do you understand that?

1 **DEFENDANT CHAMBERLAIN:** Yes, I do, Your Honor.

2 **THE COURT:** Okay. And I think that that -- just as an
3 accommodation, it is less disruptive to your life if that
4 process is followed.

5 **MR. LINCENBERG:** We appreciate that, Your Honor.

6 **THE COURT:** Oh, that's okay. That's all right.

7 **DEFENDANT CHAMBERLAIN:** Thank you.

8 **THE COURT:** The least I can do.

9 **MR. LINCENBERG:** I wanted to make one quick correction.

10 **THE COURT:** Yes, go right ahead.

11 **MR. LINCENBERG:** The bond as it was prepared, the Hussain
12 bond was \$1,000, unsecured.

13 **THE COURT:** Yeah.

14 **MR. LINCENBERG:** And as the bond was being prepared, it
15 was prepared differently. The clerk initialed it out and
16 changed it to \$1,000, unsecured.

17 Because it's now a messy bond form (Indicating), I just
18 wanted to state that for the record.

19 **THE COURT:** Fine. Messy. It's messy. This whole case is
20 messy.

21 **MR. REEVES:** So long as it's accurate, and I think it is,
22 Your Honor.

23 One last detail. In the event that Dr. Lynch does not
24 come, et cetera, on February 27th, and in the event then that
25 the case is adjourned further as to Mr. Chamberlain, I think

1 the government agrees it doesn't make sense for him to travel
2 at that time, and will inform the Court --

3 **THE COURT:** No.

4 **MR. REEVES:** -- that that would extend the case; it may
5 need to extend the exclusion of time under the Speedy Trial
6 Act. This is a very complicated case. I think it's important
7 to build a record about the appropriateness of the exclusion,
8 and the possibility that we would be excluding time from today,
9 through that appearance, to a future date set by the Court.

10 **MR. LINCENBERG:** I think that makes sense. Can I have one
11 minute to explain to my client --

12 **THE COURT:** Yeah.

13 **MR. LINCENBERG:** -- what all that means?

14 **MR. FRENTZEN:** Before the explanation, if I could, I
15 believe -- and I'm going on memory here, Your Honor, but I
16 believe the Speedy Trial Act also has an exclusion for getting
17 co-defendants together in the same case. And so I think that
18 would also be appropriate to put on the record.

19 Thank you.

20 **MR. REEVES:** So I'm belt, and he's suspenders.

21 **MR. LINCENBERG:** Let me just take one --

22 (Off-the-Record discussion between counsel and defendant)

23 **MR. LINCENBERG:** I've consulted with my client, and my
24 client is certainly willing to exclude time, as Mr. Reeves has
25 --

1 **THE COURT:** Thank you. All right.

2 **MR. REEVES:** Thank you, Your Honor.

3 **THE COURT:** Thank you.

4 Mr. Weingarten.

5 **MR. WEINGARTEN:** Just one quick point. Since the case is
6 adjourned until the end of February, I assume no extradition
7 proceedings will commence. I know the Court has limited power
8 on that subject as well. But I would like it on the record.

9 **THE COURT:** I can't -- I can't give that assurance,
10 because it's not within the Court to give that assurance.
11 However, I will tell you that it will be the Court's view that
12 extradition ought to proceed expeditiously, in the event that
13 your client does not appear.

14 **MR. WEINGARTEN:** I -- I'm not surprised to hear that.

15 **THE COURT:** Not surprised. Oh, all right.

16 **MR. WEINGARTEN:** But I'm worried about from now until
17 February 27.

18 **THE COURT:** Well, that's something for you to talk to him
19 about it. I can't -- I'm not going to broker a deal. So just
20 sit down. You know people in the U.S. Attorney's office?

21 **MR. WEINGARTEN:** I do. I watched the Super Bowl with one.

22 **THE COURT:** So talk to Mr. Reeves, Mr. Frentzen,
23 Mr. Leach. They're all fine lawyers. And --

24 **MR. LINCENBERG:** Okay.

25 **MR. REEVES:** I do think that's the right remedy,

1 Your Honor. And I am happy to confer with counsel about it, as
2 we have on this matter in the past. But no, the government is
3 not going to make a representation one way or the other.

4 **THE COURT:** Okay.

5 **MR. REEVES:** Anything else?

6 **THE COURT:** Well, that's usually my question.

7 **MR. REEVES:** Okay.

8 (Off-the-Record discussion between the Court and Clerk)

9 (The Court signs document)

10 **THE COURT:** Okay. Anything else?

11 **MR. REEVES:** Nothing for the government.

12 **THE COURT:** Okay, thank you very much for coming in.

13 **MR. REEVES:** Thank Your Honor.

14 **MR. FRENTZEN:** Thank you, Your Honor.

15 **MR. WEINGARTEN:** Thank you.

16 (Proceedings concluded)

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CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Belle Ball

/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Monday, February 4, 2019